

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CARL S. WILLIAMS)	
Claimant)	
VS.)	
)	Docket No. 192,093
THE BOEING COMPANY - WICHITA)	
Respondent)	
AND)	
)	
AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	
AND)	
)	
WORKERS COMPENSATION FUND)	

ORDER

Claimant requested review of the Award dated November 7, 1996, entered by Administrative Law Judge Jon L. Frobish. The Appeals Board heard oral argument on April 15, 1997.

APPEARANCES

Joni J. Franklin of Wichita, Kansas, appeared for the claimant. Eric K. Kuhn of Wichita, Kansas, appeared for the respondent and its insurance carrier. Marvin R. Appling of Wichita, Kansas, appeared for the Workers Compensation Fund.

RECORD AND STIPULATIONS

The record considered by the Appeals Board and the parties' stipulations are listed in the Award.

ISSUES

The Administrative Law Judge denied claimant's request for benefits on the grounds that claimant failed to provide respondent with timely notice of accident. Claimant requested the Appeals Board to review that finding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Administrative Law Judge's finding of lack of timely notice should be affirmed.

The facts are uncontroverted that claimant did not notify respondent of a work-related accidental injury involving his back until approximately 35 days after it occurred. Because claimant's accident occurred on April 25, 1994, the notice provisions contained in K.S.A. 44-520 are applicable. That statute provides:

"Except as otherwise provided in this section, proceedings for compensation under the workers compensation act **shall not be maintainable** unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a **failure to notify** under this section was due to **just cause**, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice." (Emphasis added.)

The Appeals Board finds claimant failed to establish "just cause" for failure to notify respondent of his accidental injury within ten days of its occurrence. The Appeals Board also finds claimant was aware he had sustained injury as he sought chiropractic treatment

the day following the incident. Claimant was also aware of respondent's policy to immediately report accidents. In this instance, the Appeals Board finds claimant's explanation that he did not consider his injury to be serious to be without merit. Further, claimant's alleged fear of losing his job for reporting the accident appears unfounded. Under the specific facts presented, neither excuse constitutes just cause for failing to report the accident within ten days of its occurrence.

The Appeals Board hereby adopts the findings and conclusions set forth in its Order dated September 15, 1995, previously entered in this proceeding.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award dated November 7, 1996, entered by Administrative Law Judge Jon L. Frobish should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joni J. Franklin, Wichita, KS
 Eric K. Kuhn, Wichita, KS
 Marvin R. Appling, Wichita, KS
 Jon L. Frobish, Administrative Law Judge
 Philip S. Harness, Director